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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/007,433	12/03/2001	Dane R. Jackson	460.1832USX	4141

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EXAMINER

RUHL, DENNIS WILLIAM

ART UNIT	PAPER NUMBER
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3737

DATE MAILED: 09/23/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/007,433

Applicant(s)

JACKSON ET AL.

Examiner

Dennis Ruhl

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-70 is/are pending in the application.
- 4a) Of the above claim(s) 11-22, 24 and 47-70 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 23, 25-35 and 37-46 is/are rejected.
- 7) ☒ Claim(s) 36 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other: _____

1. Applicant's election of claims 1-10,23,25-46 in Paper No. 6 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 11-22,24,47-70 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 6.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1,3,4,6-10,23,25,27,28,30-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Wolfe et al. (4543098).

With respect to claims 1,3,23,25,27, Wolfe discloses a tampon that has cellulosic fibers (see claim 4). In column 5, lines 3-6 Wolfe discloses a density that satisfies the claimed range. Wolfe discloses that the tampon absorbs about 4 grams per gram of tampon so based on the fact that the tampon weighs 2.7 grams the absorbency would be about 10.8 grams, which satisfies the claimed absorbency value.

For claims 4,28, based on the well known equation of density = mass/volume and the density disclosed by Wolfe and the mass disclosed by Wolfe, one can arrive at a volume of 10.8cc.

For claims 6,30, the limitation is considered to be inherent. The tampon of Wolfe inherently has the claimed diameter.

For claims 7-9,31-33, the examiner considers Wolfe to disclose the claimed structure as far as cross pad construction, radial construction, and flat pad construction. These terms have no definite meaning in the art and are considered very broad.

For claims 10,34, the coverstock is 16.

4. Claims 35,37-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Hayes et al. (5364383).

For claims 35,37-42, Hayes discloses a tampon that is made from cellulose materials. See the end of column 1 to column 2, line 2 and column 8, lines 64-66 for a disclosure of a density that satisfies the claimed range. At least 0.05 g/cc satisfies the claimed about 0.05 g/cc. With respect to the absorbency of the tampon the examiner considers the claimed absorbency of the tampon to be inherently present in Hayes. This is because if applicant can provide a cellulosic tampon in the recited density and it will absorb the recited amount, the tampon of Hayes will also absorb the recited amount because Hayes also uses a cellulosic tampon at a density in the claimed range.

For claims 43-45, the examiner considers Hayes to disclose the claimed structure as far as cross pad construction, radial construction, and flat pad construction. These terms have no definite recognized meaning in the art and are considered very broad.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 2,5,26,29, are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolfe et al..

Wolfe discloses the invention substantially as claimed.

For claims 2,26, Wolfe does not disclose that the cellulosic fibers are made from the recited materials of the Markush grouping. The recited Markush grouping is reciting materials that are very well known and old in the tampon art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the recited materials because the recited materials are very old and well known in the art and one of ordinary skill in the art would be motivated to use the recited materials

because they are already known as being useful and non-toxic to the human body when used in tampons.

For claims 5,29, Wolfe does not specifically recite the amount of cellulosic fiber present in the tampon. It would have been obvious to one of ordinary skill in the art to use the claimed amount of cellulosic fiber to adjust the absorbency characteristics of the tampon. Reciting the amount of cellulosic fiber in the tampon in view of the fact that Wolfe discloses having cellulosic fibers is not considered to be sufficient to patentably distinguish over Wolfe.

8. Claim 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hayes et al. (5364383) in view of Van Iten (5350371).

Hayes discloses the invention substantially as claimed. Hayes does not disclose that the tampon has a coverstock. Van Iten discloses a tampon and discloses that the tampon has a coverstock 28. The coverstock is present to keep the individual fibers of the tampon from contacting the inner wall of the vagina to ensure that no fibers are left behind in the vagina after the tampon is removed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the tampon of Hayes with a coverstock as disclosed by Van Iten so that the tampon fibers of Hayes will be prevented from separating from the tampon and won't be left in the vagina after withdrawal of the tampon.

9. Claim 36 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 3761

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 703-308-2262.

The examiner can normally be reached on Tuesday through Friday.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

DR



DENNIS RUHL
PRIMARY EXAMINER